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ENFORCING FOREIGN DECREE FOR DIVORCE THOUGH IT NULLIFIES HOME JUDGMENT FOR NON-SUPPORT.

Where a judgment is rendered without jurisdiction over the person, it is undoubtedly true and often has been decided, that it will not be enforced in a foreign jurisdiction against defendant.

And where jurisdiction of the *res* is obtained by fraud of a plaintiff, in constructive or other service of defendant, it would seem that the judgment or decree could be resisted as fully abroad, notwithstanding the faith and credit clause of the Constitution, as where there was no jurisdiction to render a personal judgment for want of actual personal service on defendant. In neither case would any finding of facts by the court rendering the judgment be binding abroad.

But jurisdiction of the person or of the *res* being conceded, may a foreign court go into the proof of the merits of a case as presented to the court rendering a judgment?

The facts in a divorce case as reported in Connecticut Supreme Court of Errors show that defendant pleaded a decree of divorce already rendered in a South Dakota Court. The plea was allowed by the trial court and affirmed by a majority in the Supreme Court of Errors. Gildersleeve v. Gildersleeve, 92 Atl. 684.

There is a full recital of the facts so far as important to our inquiry in the dissenting opinion by one of the court:

"The evidence shows: That Mr. Gildersleeve, a resident of Connecticut, did not support his wife; that, when informed she was with child, he denied its paternity, although subsequently by judicial decree acknowledging the paternity; that after the birth of the child in February, 1894, he provided no support for wife or child; that his wife had him arrested for non-support in August, 1894, and in September, 1894, judgment was suspended upon his agreeing to furnish weekly support; that he continued to furnish this for six months and up to March, 1895; that either late in 1894 or early in 1895 he went West, and reached South Dakota probably in January, 1895, returned to Connecticut in February, 1895, and then returned to South Dakota, and shortly thereafter, and while he was making payments under the suspended judgment, and while he himself was deserting his wife and new born son, he took steps toward beginning an action for divorce in South Dakota; that he brought this late in the fall of 1895, and less than a year after he reached South Dakota, and obtained the divorce January 11, 1896, and returned to New Haven shortly thereafter. It is clear that Mr. Gildersleeve went to South Dakota to obtain a divorce and escape the penalty liable to be imposed by the Connecticut court for non-support. It is also clear that the ground of his action was absolutely nonexistent, but this issue is not raised upon the pleadings."

The majority opinion confines its attention to the question of comity as to the grounds of the decree for desertion as being or not opposed to public policy and good morals in Connecticut, most probably for the reason as stated by the dissenting judge that no issue as to the Connecticut judgment for non-support was raised upon the pleadings.

But did this have to be specifically raised, where evidence showed that the divorce abroad was sought to get rid of a judgment for non-support as rendered by the Connecticut court? The defendant in

the South Dakota court was vested with a right inhering in the relation the South Dakota court declared to be dissolved. Is it not stretching comity very greatly for the Connecticut court to declare, in effect, that, by a South Dakota court, judgments in its own state are abrogated?

One of the reasons recited by Minor in his Conflict of Laws, § 5, for a refusal of comity is where the enforcement of a foreign law would involve injustice and injury to the people of the forum. The Supreme Court says this does not apply to this case.

But why does it not apply, if it defeats a vested right in a citizen of the forum? Must the injustice or injury spoken of apply as a principle generally, or may it apply only to one or more citizens of the forum? If the former, the principle is hardly distinguishable from those which prevent recognition of foreign judgments which are against good morals or public policy, also mentioned by Mr. Minor in the same section. If the latter, it hardly seems there could be a plainer case of injustice and injury to one of the citizens of a forum.

Apart from this, however, how may it be imagined, that in constructive service merely anything more may be effected by any judgment therein than disposition of the *res* before a court? It has no ulterior effect by construction or otherwise. The Connecticut court rendered a judgment upon personal service and here it is said its effect is nullified by a decree in constructive service.

There seems also still another question involved. While it may be true, that one acquiring a domicile in another state carries the *res* of his matrimony over to that state, so far as jurisdictional purposes are concerned, is this true when the state from which he has removed impresses a judgment on that *res* so far as obligations thereunder are imposed?

The judgment thus rendered would seem to place on this *res* the quality of a *ne exeat* and while locomotion is free and the acquisition of another domicile is free, yet either is exercised in subordination to vested rights as to what accompanies removal.

The *res* in matrimony, though intangible, is greatly like a tangible thing in many respects. If it forms the basis for jurisdiction, it ought to form the basis for the lien of a judgment thereon. And, if it is the ground of judgment in one state, how may a foreign state by its laws dissipate the effect of such judgment?

The only way to answer this is to say, that the acquiring of a domicile in another state so operates and the judgment creditor takes chances of its displacement by exercise of one's right to change. The last analysis of such position is that, even though there be no subsequent divorce in the state of a new domicile, judgment arising out of the relation in the old domicile, ceases to operate. But we greatly doubt whether any court would thus declare. We think we could find cases to the contrary.

NOTES OF IMPORTANT DECISIONS

MOB VIOLENCE—ASSEMBLAGE MAKING MUNICIPALITY LIABLE FOR ITS ACTS.—A statute which makes a municipality liable for the acts of a mob is a harsh statute and ought to receive very strict construction. Such a statute would seem to embrace only an assemblage of men bent upon illegal purposes in defiance of and even to the overcoming of all opposition by civil authorities.

Therefore it seems strange to us for Kansas Supreme Court to hold that a "Kangaroo Court" formed in the precincts of a city jail trying and fining a supposed delinquent and whipping him for refusing to pay, all under the eye and with the tacit approval of the city police, should be deemed "a mob" and make

the city liable for the whipping. Blakeman v. City of Wichita, 144 Pac. 816.

The Kansas court adverts to former statutes concerning "riotous assembly," and defining "a mob" with reference to lynching, but these only concerned the committing of criminal offenses and not the placing of any responsibility for damage on a city for the acts of a mob.

The mere playing of a prank upon another, when the crowd playing it is not assembled in open defiance of the officers of the law, would seem to have about it little of the spirit of a mob, no matter how many people are engaged in committing the prank. The general peace of the community, which a municipality must maintain to the utmost of its ability, seems no more violated by such an unlawful act, than by a mere affray, if as much. A ruling of this kind seems so opposed to reason and common sense, and adherence to technical definitions as varying from common parlance, that it is difficult to understand how the decision could have been rendered.

A mob is an assemblage of frenzied people, who set out to avenge some wrong or fancied wrong and their purpose is in the way of an insurrection against constituted authority—not to commit a mere trespass against another. Any trespass may be merely an incident of a mob rising, while in the case at bar it is the main intent. It is used by the court to prove the existence of a mob, when often no injury may follow from there being a mob.

ALIENAGE—RIGHT OF RECOVERY UNDER EMPLOYERS' LIABILITY ACT.—In McGovern v. Philadelphia & R. Ry. Co., 35 Sup. Ct. —, XLVII Chicago Legal News 193, it is held that alienage is not a condition affecting recovery under the federal employers' liability act.

Mr. Justice McKenna speaks of diversity of opinion on the subject of recovery under compensation cases for injury for tort and distinguishes as to the federal act as follows:

"Its purpose is something more than to give compensation for the negligence of railroad companies. * * * The rights and remedies of the statute are the means of executing its policy. * * * It is for the protection of life that compensation for its destruction is given and to those who have relation to it."

This is scarcely as clean cut a statement, as one might desire. Instead of saying the purpose "is something more than to give compensation," etc., it seems to us it were better to say its only purpose is imposing a right of action as "the means of executing its policy." Our federal government has no jurisdiction ex debito justitiae to grant to any citizen a right of action for anything. Private rights and wrongs are exclusively of state cognizance. It seems to us that all recoveries by individuals under federal law, rather ought to be regarded as in the nature of qui tam proceedings in aid of enforcing regulation. Regulation is the only power that is granted by the commerce clause.

REMOVAL OF CAUSES—SEPARABLE CONTROVERSY AS REFERRING TO JURISDICTION OR GROUND OF RECOVERY.—The District Court of Western District of Washington holds that an attachment suit against stockholders of an insolvent company for the purpose of subjecting property in a state to their liability as stockholders is removable by one of them as a non-resident, upon the ground that their liability is joint and several. Wright v. Ankeny, 217 Fed. 985.

In support of this ruling there is cited section 28 of the judicial code which provides that: "When * * * there shall be a controversy which is wholly between citizens of different states, and which can be fully determined as between them, then either one or more of the defendants" may remove it. It seems to us that this section in no way refers to separableness. It only gives to one of several non-residents the right to remove on the presumption that others will not object.

But the court goes on to say that "the liability of each stockholder of an insolvent corporation is a distinct and separable liability which could be pursued by the receivers in separate causes of action." Then the court further adds that "all of the parties are necessary to an adjudication of the conspiracy charged as bearing upon the title to this land * * * and the cause of action being removable upon any phase of legal approach" as to non-resident under the section from the judicial code, is removable as to all of them, though it is not contended that the controversy is "wholly" between citizens of different states. If this does not fly in the very teeth of this section it is hard to understand the section at all.

The court, in effect, here determined that though there is no separableness so far as jurisdiction is concerned there is such so far as alleged liability is concerned and apparently is dissatisfied with its ruling as it endeavors to bolster up the ruling with an inapplicable provision of law.

DUTIES AND RIGHTS OF NEUTRAL GOVERNMENTS.

Furnishing Aid to Belligerent.—According to international law, which is said to be the general rules which determine the conduct of civilized states in their dealings with one another, a neutral government is under the absolute obligation to do nothing which will aid one belligerent to the injury of the other. A neutral government has no right to furnish armed assistance in the way of troops or munitions of war to a nation engaged in war with another.[1] Some modern writers of prominence have said that a neutral state is at liberty to render aid of this nature in performance of a treaty made before the beginning of hostilities.[2] But a great deal of embarrassment was caused the United States Government in performing its part of the treaty of 1778 with France, wherein the United States accorded to the French certain privileges as to the use of United States ports by French war vessels and privateers, which privileges were not to be granted to the enemies of France; during the subsequent war between France and other European powers, the United States complied with the terms of the treaty and this action was made ground of complaint against the United States.[3] The general opinion now is, however, that such treaty provisions are no excuse for an obvious breach of neutrality and, in fact, modern nations no longer enter into treaties under which they would not be able to preserve strict neutrality in the event of war.

Sales of Munitions, etc.—The question of sales of munitions of war by a neutral nation to a belligerent was involved to some extent in the case of certain sales by the United States government of arms and ammunition not needed by it, which were begun before the Franco-Prussian war. Large purchases were made by an agent of the French government after the beginning of the war. The committee appointed by Congress to investigate these sales reported that if the purchasers were agents of the French, this fact was unknown to the United States government and even if it had been known, such sales would have been lawful, if made in pursuance of a national policy adopted prior to the war.[4] But European writers do not indorse the position taken by the committee as to such sales. Hall on Int. Law (4th ed.) par. 218, note.

Although the neutral nation has no right to furnish munitions of war to a belligerent, there is no obligation on it to restrain its subjects from doing so, and such subjects have the right to sell at home or carry to a belligerent nation arms and munitions of war, subject only to the possibility of their being seized as contraband of war while in transit. While Thomas Jefferson was secretary of state, he wrote to the British minister as follows:

"Our citizens have always been free to make, vend and export arms. It is the constant occupation and livelihood of some of them. To suppress their callings, the only means, perhaps, of their subsistence, because a war exists in foreign and distant countries in which we have no concern, would scarcely be expected. It would be hard in principle and impossible in practice. The law of nations, therefore, respecting the rights of those at peace, does not require from them such an internal derangement in their occupations."

Loaning Money.—Not only may subjects of a neutral nation sell arms and

(1) Hale on Int. Law (4th ed.) par. 208.
(2) Bluntschil, par. 759; 1 Kent's Com. 116; Dana's Wheaton's Int. Law, par. 424.
(3) Wharton's Dig. Int. Law, par. 148, p. 124; Dana's Wheaton's Int. Law, par. 425 and note 204.
(4) Wharton's Dig. Int. Law, par. 391.

munitions to a belligerent, but such subjects also have the right to loan money to one of the belligerents, and the neutral government is under no obligation to restrain her subjects from so doing. During the Franco-Prussian war, both nations borrowed money in England.[5] Daniel Webster stated in 1842 the correct position:

"As to advances and loans by individuals to the government of Texas or its citizens, the Mexican government hardly needs to be informed that there is nothing unlawful in this, so long as Texas is at peace with the United States, and that these are things which no government undertakes to restrain."[6]

But the neutral nation itself cannot loan money to one of the belligerents. This position was taken by the United States in its instructions to the commissioners sent to Paris to negotiate a treaty with France and this principle is also laid down in 1 Kent's Com., p. 116, as follows:

"The neutral is not to favour one of them (the belligerents) to the detriment of the other; and it is an essential character of neutrality to furnish no aids to one party, which the neutral is not equally ready to furnish to the other. A nation, which would be admitted to the privileges of neutrality, must perform the duties it enjoins. Even a loan of money to one of the belligerent parties is considered to be a violation of neutrality. A fraudulent neutrality is no neutrality."

Fitting Out Vessels.—At the time of the Civil War and subsequent thereto, there was an almost constant controversy between the United States and England as to the duties of a neutral nation in regard to the fitting out of vessels on a neutral's territory. The matter was settled finally by the treaty of Washington providing for an arbitration of all claims and by the award thereunder. The treaty contained certain rules as to the duties of a neutral nation, among which was one to the effect that a neutral nation is bound not to allow its territory to be used as a base of operations "by which is meant as a place from which a land or naval force draws resources or reenforcements, from which it sets forth on offensive expeditions, or in which it finds a place of refuge in time of need;"[7] also a rule declaring that "a neutral government is bound, first, to use due diligence to prevent the fitting out, arming or equipping within its juridiction, of any vessel which it has reasonable grounds to believe is intended to cruise or to carry on war against a power with which it is at peace, and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use." Although these rules have been regarded with some disfavor by the powers generally, they no doubt express, in a general way, what is now considered the duty of a neutral government, and, in fact, at the commencement of the recent war between the United States and Spain, Great Britain recognized these rules by stating that the observance of them was a substantial part of the duty of a neutral power.

Rights of Neutral Nation, Commerce.—A neutral has a right to pursue its ordinary commerce and it may become the carrier of the enemy's goods, without being subject to any confiscation of the ship, or the neutral articles on board; though not without the risk of having the voyage interrupted by the seizure of the hostile property.[8]

Use of Neutral Ports.—It is well settled also that a neutral has the right to permit its ports to be used by a belliger-

(5) Wharton's Dig. Int. Law, par. 390.
(6) Executive Documents, 27th Congress, 1841-42.
(7) Hall on Int. Law (4th ed.) par. 22L.
(8) I Kent. Com., 117.

ent ship for the purpose of obtaining necessary repairs of a nautical nature and sufficient supplies or provisions to enable her to reach her home port.[9] But it is now generally held that a neutral nation has no right to supply a belligerent ship with more coal than is sufficient to carry it to its nearest home port. This policy was first adopted by Great Britain during the Civil War in the United States, it being further provided that the same vessel should not obtain more than one supply of coal in British waters within three months.[10] And practically the same rule was also observed by the United States during the Franco-Prussian war.[11] While a belligerent vessel may enter a neutral port to obtain coal, nautical supplies and provisions as just stated, the vessel is generally forbidden to leave within twenty-four hours after the departure of a ship of the other belligerent, and neutral nations now generally restrict the stay of a belligerent vessel to a period of twenty-four hours, except in case of urgent necessity.[12] This restriction was imposed by Great Britain during the Civil War in the United States and likewise by the United States during the Franco-Prussian war.[13]

A belligerent may properly bring a prize into a neutral port, but the neutral has the right to refuse the same, and, in fact, the United States has frequently stated that it will not allow sales in its ports of prizes captured by foreign powers.[14]

Chancellor Kent says: "In the opinion of some jurists, it is more consistent with a state of neutrality, and the dictates of true policy, to refuse this favor, for it must be very inconvenient to permit the privateers of contending nations to assemble, to gether with their prizes, in a neutral port."[15]

Contraband of War.—American and English jurists have always recognized that, apart from special convention or treaty, an enemy's goods on board a neutral ship are liable to seizure as contraband of war, while the goods of a neutral found on board an enemy's vessel are not liable to seizure. In other words, the rule as recognized is that war gives a belligerent the right to capture the goods of an enemy and not the goods of a friend. There was another theory expressed in the phrases, "free ships, free goods" and "enemy ships, enemy's goods," which theory was at one time the policy of France and Spain, apart from treaty. In 1856, Great Britain, France, Russia, Prussia, Sardinia and Turkey stated in the declaration of the Congress at Paris, to which they were parties, that (art. 2) "The neutral flag covers enemy's goods, with the exception of contraband of war" and (art. 3) "Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag." This declaration has since been accepted by all civilized nations, except Spain, Mexico, Venezuela and the United States, although the latter nation expressly adopted the principles of the declaration in the civil war and likewise in the war with Spain. Although the declaration of the Congress at Paris aforesaid provided that the same should not be binding "except between those powers who have acceded or who shall accede to it," yet it has been the policy of nations which were parties to it to give to neutrals not parties to it the benefit of its provisions, even though when one of the parties to the declaration was at war with a nation not a party to it, as was done in the Franco-German war and the war between England and France on one hand and China on the other, in 1860.

(9) Wharton's Int. Law, par. 394.
(10) Hall on Int. Law (4th ed.) par. 221.
(11) 23 L. Mag. & Rev., 386.
(12) Hall on Int. Law (4th ed.) par. 23L.
(13) Wharton's Dig. Int. Law, par. 402; 23 L. Mag. & Rev. 386.
(14) Wharton's Dig. Int. Law, par. 400; Hall on Int. Law, (4th ed.) par. 226, note.
(15) I Kent Com., p. 124.

Having seen that under the general rules between nations the property of a neutral cannot be seized unless the same is "contraband of war," it is important to know just what articles and goods are included within the term. In the case of The Peterhoff,[16] the United States Supreme Court divided articles and goods into three classes: The first being those articles manufactured and primarily and ordinarily used for military purposes in time of war; the second being articles which may be and are used for purposes of war or peace according to circumstances; and the third, being those articles exclusively used for peaceful purposes. Merchandise of the first class, when destined to any port in a belligerent country or place occupied by the army or navy of a belligerent, is always held to be contraband; while the goods of the second class are contraband only when actually destined for the military or naval use of a belligerent, and merchandise of the third class is never contraband.

Arms and munitions of war are included in the first class and are universally treated as absolutely contraband, and, although the term "munitions of war" is rather indefinite, it is ordinarily held to include anything and everything primarily and ordinarily used for military purposes when in an enemy's possession in war times. In the case of The Bermuda,[17] it was held that articles for immediate use in battle, such as cannon, guns, pistols, swords, cartridges, gunpowder and shells were contraband. And in The Peterhoff,[18] artillery harness, army blucher shoes, artillery boots and "government regulation" gray blankets were likewise held to be contraband.

It is difficult to say just what articles belong in the second class mentioned above, since the practice of nations seems to be dictated generally by self-interest and since the treaties of the different nations with each other are very divergent in this respect, and, in fact, no individual nation seems to have pursued any consistent course in framing treaties in this regard. While provisions and articles of food and clothing are not generally contraband, under certain circumstances they may become such and will be so considered while in transit to the army or navy of an enemy or to the ports of military or naval equipment, unless, it would seem, they are the product of the neutral country to which the vessel belongs. In 1898, by General Orders No. 492, the United States took the position that provisions were contraband when destined for an enemy's ship or ships or for a place that is besieged. Likewise, provisions were held to be contraband in The Panama,[19] The Benito Estenger,[20] The Carlos F. Roses.[21] Materials for use in naval construction have been held to be contraband by the English courts and such is the rule at present in that country. Upon this theory, the following articles have been held to be contraband by the English courts: Planks and wood for shipping;[22] sail cloth,[23] masts and anchors;[24] copper for use as sheathing.[25] The United States also regards articles of naval construction as contraband, although such is not the rule in France.[26] Horses are held to belong to that disputable class of merchandise which may or may not be contraband, according to the circumstances. This is the rule in the United States,[27] although, as a general rule, horses are usually considered as

(16) 5 Wall. (U. S.) 58.
(17) 3 Wall (U. S.) 514.
(18) 5 Wall (U. S.) 58.
(19) 176 U. S. 536.
(20) 176 U. S. 568.
(21) 177 U. S. 675.
(22) The Endraught. 1 C. Rob. 23.
(23) The Neptungus, 3 C. Rob. 108.
(24) The Staadt Embden, 1 C. Rob. 29.
(25) The Charlotte, 5 C. Rob. (reprint) 245.
(26) I Am. State Papers, 450, 560; Hall on Int. Law (4th ed.) par. 243.
(27) The Brig Lucy, 37 Ct. Cl. 100.

contraband, regardless of circumstances.[28] Coal is considered to be contraband by England and is likewise regarded by the United States, although France and Russia have declared that it was not contraband.[29] General Orders, No. 492, issued by the United States to its navy, June 30, 1898, provided that coal should be considered contraband "when destined for a station, a port of call, or a ship or ships of the enemy."

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(28) 1 Kent. Com. 136; Manning on Law of Nations, 355; Hall on Int. Law (4th ed.) par. 242.

(29) Hall on Int. Law (4th ed.) par. 244.

NEGLIGENCE—DANGEROUS CONDITION.

FURKOVITCH v. BINGHAM COAL & LUMBER CO.

Supreme Court of Utah. Aug. 14, 1914.

143 Pac. 121.

It is enough to show that while defendant's employe was shoveling a load of coal from a wagon on a roadway, on the side of a mountain, near the edge of a sharp incline, a piece of coal rolled down such incline, injuring plaintiff, negligence being inferable therefrom.

FRICK, J. This was an action in tort to recover damages for personal injuries. The plaintiff, respondent in this court, after alleging the necessary matters of inducement in his complaint, in substance, alleged, that on September 12, 1912, the defendant, appellant here, negligently and carelessly unloaded a wagon of coal on a "steep mountain side," and carelessly and negligently failed and omitted to place any safeguards or barriers to prevent said coal from "rolling down said steep mountain side," and carelessly and negligently omitted taking any other precautions to keep said coal from rolling down said mountain side; that in unloading said coal it was so carelessly and negligently done that a piece thereof "rolled and bounded down said mountain side," struck the plaintiff, who lived down the mountain side and in the vicinity where the coal was being unloaded, severely injuring him. The appellant in its answer admitted "that it was engaged in unloading coal at the time and place stated in the complaint, and that the plaintiff lived in the vicinity where said coal was being unloaded." It was also admitted in the answer "that the hillside below where said coal was unloaded is steep, but (appellant) alleges that the place where said coal was unloaded is a flat place, due to a widening of the grade of the wagon road at said point, and the unloading of coal at said point in the way it was being done was not obviously or inherently dangerous." It was further admitted that said coal was "unloaded by shoveling the same out of the wagon in which it was contained" onto the ground. Appellant denied all acts of negligence, and pleaded contributory negligence on the part of respondent. Upon these issues a trial to a jury resulted in a verdict and judgment in favor of respondent. The appellant has preserved all the evidence adduced at the trial in a proper bill of exceptions, and, among other things, now insists that the evidence is not sufficient to sustain the verdict and judgment.

The evidence produced on behalf of respondent at the trial is, substantially, as follows: That on September 12, 1912, respondent lived with his wife in a small house in what is called a gulch in Bingham Canyon, about 200 feet distant and down a steep incline from the point where the load of coal mentioned in the pleadings was being unloaded by one Davis, an employe of the appellant; that the coal was being unloaded at a place where appellant and others had frequently before unloaded coal for the use of those who lived in the gulch aforesaid, of whom there were quite a number of families who lived there in small houses; that the coal and other things were unloaded at the place aforesaid, for the reason that there was no way to reach the small houses by team and wagon, and hence said coal and other things were usually unloaded, that is delivered, on top of the mountain as aforesaid, and those who purchased coal would get it there and take it down the mountain to their homes. On September 12, 1912, the exact time of day is not disclosed, the respondent and one Sabine were digging a small cellar in the rear of respondent's house. When they were about through, and just after Sabine had left the cellar, he noticed a large piece of coal rolling down the steep incline of the mountain, which incline was shown to be from 36 to 40 degrees. The coal was coming fast in the direction of respondent, and Sabine shouted to him to get out of the way. Respondent dodged to get out of the way of the lump of coal, but it struck him, grazing his head and striking him on the arm, breaking it. Respondent became unconscious from the blow, and was im-

mediately taken into the house by his wife and Sabine. Sabine and respondent's wife immediately (within five minutes they state) went up the trail to the top of the mountain where the coal was being unloaded and they found Davis in the wagon, in which there was some coal left. There was what they called a "big pile" unloaded on the ground. Respondent's wife testified that the edge of the pile of coal was about two feet from the margin of the highway or flat place where the coal was being unloaded, that is about two feet from the brink of the steep incline of the mountain. Both Sabine and respondent's wife testified that there was no barrier or protection of any kind placed around the edge of the road where the coal was thrown from the wagon to prevent any pieces from rolling down the mountain side towards the houses in which the people were living in the gulch below. The lump of coal which rolled down the mountain side was produced in court and exhibited to the jury, but its size or shape is not disclosed. The only other evidence produced by the respondent related to the character and extent of the injuries and the damages sustained by him. When respondent rested appellant interposed a motion for a nonsuit upon the ground, among others, that respondent had failed to establish negligence on its part. The motion was overruled, after which appellant produced some evidence to the effect that the flat place where the coal was unloaded was larger in extent or area than testified to by respondent's witnesses, and that the coal was further away from the edge or margin of the mountain brink. No explanation was offered respecting the unloading of the coal or how it happened that the piece in question passed beyond the margin of the highway and rolled down the mountain side.

(1) Appellant contends that the court erred in overruling its motion for nonsuit. In considering that question it must be remembered that appellant admitted the unloading of the coal in question. While the admission is not couched in that particular form, yet the admission is that it unloaded coal "at the time and place" stated in the complaint, and the evidence is clear that no one else unloaded or handled coal at the time and place mentioned; hence the admission is to the effect that appellant unloaded the coal in question. It is admitted, therefore, that appellant unloaded the coal by shoveling it from the wagon onto the ground near the margin of the steep mountain side, and at a place in the vicinity of which there lived a number of families in small houses, which were some 200 feet down the mountain side, and the evidence is not disputed that the incline or slope of the mountain at that point was from 36 to 40 degrees. If, therefore, any object, such as a stone or a piece of coal of any considerable size, the shape or form of which was round, or nearly so, were thrown to or near the margin, or where it would bound and land so near the margin of the highway on the mountain that by reason of its high specific gravity the force of gravitation would cause it to roll down the incline of the mountain, it in all probability would become a source of danger to any one who might be in its pathway. Every sane person is charged with knowledge respecting the properties of matter and the natural laws of nature. Every person who is handling objects which are affected by the law or force of gravity is charged with the knowledge that if he permits such objects to fall or to be where the force of gravity will cause them to move downward, any one who may be in the pathway of such an object, while in motion, may be injured. If, therefore, a person, where he has a right to be, is injured by such a moving object, he is not required to prove any particular act of negligence on the part of the person in whose care and under whose control the object in question was before the injury occurred, but, under such circumstances, it is sufficient that the injured person prove the facts from which negligence may be inferred. In the case at bar the respondent proved that appellant was handling a substance of high specific gravity; that it was thrown from a wagon onto the ground near the margin of a steep incline, and where if it moved or rolled beyond the margin, the immutable laws of nature would cause it to continue to roll down the mountain side, and thus might, and probably would, inflict injury upon any living being in its pathway. Then again, all men, the jury included, are bound to know that it is a universal and unchangeable law of nature that if any substance of any considerable size and specific gravity is placed at rest it will so continue until it is started in motion by some physical force or power. The inference, therefore, that Davis, who was unloading the coal, caused the piece in question to be precipitated over the edge of the margin of the mountain is not only natural and logical, but it is one of great probative force. The jury, therefore, were not only justified in inferring or presuming that Davis, in unloading the coal placed it where by the forces of nature it would roll down the mountain side, but it seems to the writer they could not well have arrived at any other logical conclusion. Being charged with knowledge that if so placed the coal would, nay, must, roll down the moun-

tain side to a place where people were living, the jury had a right to infer that it was through the negligence of Davis that it was so placed. Where a person is working on a building, wall, or scaffold which extends any considerable height above the surface, and has in his possession and under his control tools, or other objects, which he permits to fall from the building, wall, or scaffold, by reason of which injury is inflicted on another, negligence may be inferred or presumed from the mere fact of the falling of the objects aforesaid. See Sheridan v. Foley, 58 N. J. Law, 230, 33 Atl. 484; Armbright v. Zion, 108 Iowa, 338, 79 N. W. 72; Melvin v. Pennsylvania Steel Co., 180 Mass. 196, 62 N. E. 379. See, also, note to Barnowski v. Helson, 15 L. R. A. 33, where a large number of cases are collated. There is no difference in principle between objects handled on a building, wall, or scaffold and those that are thrown or placed near a precipitous or steep incline. Whatever difference there is in that regard is one of degree and not of kind. The foregoing cases, therefore, are strictly in point here.

[2] In this case there is, however, another fact or circumstance which the jury were authorized to consider in determining whether appellant was negligent or not in the premises. The fact is uncontroverted that no effort whatever was made to prevent any stray piece of coal that might bound away from the other coal, or in some other way get near the brink of the steep incline, from going beyond it and down the mountain side. That some barrier or protection could have been placed along the edge of the road to prevent pieces of coal from going down the mountain side, and that such could have been done without practically any effort or expense, is so palpable that merely to mention the fact is sufficient. Where a dangerous condition is easily obviated or rendered harmless, a failure to do one or the other may be considered in determining the question of negligence. See Swan v. Railroad, 41 Utah, 518, 127 Pac. 267, where the principle is applied, and where the cases on the point are referred to. We are clearly of the opinion that the evidence was sufficient to justify a finding of negligence upon the part of appellant, and that under the circumstances the duty was cast upon it to offer some explanation of how the coal came to pass beyond the margin of the highway and down the mountain side. While, as we have pointed out, appellant offered some evidence with regard to the size or area of the place where the coal was being unloaded, it offered none whatever to explain the accident.

In view of the foregoing the court charged the jury as follows:

"You are instructed that if you should find from a preponderance of the evidence that the piece of coal which rolled down the mountain side and struck the plaintiff was a part of the coal being unloaded by the defendant at the time and place alleged in plaintiff's complaint, the rolling of such piece of coal down the steep mountain side raises a presumption of negligence on the part of the defendant, and unless you should find from all the evidence in the case that such presumption is overcome, you should find for the plaintiff."

Appellant excepted to the foregoing instructions and now insists that the court erred in so charging the jury. If what we have said respecting the inference or presumption of negligence is correct, then it follows that the court did not err in giving the charge excepted to. What we have already said, therefore, respecting the principle involved in the charge disposes of this contention.

It is also insisted that the court erred in refusing a number of requests to charge offered by appellant. It offered 13 requests, all of which the court refused. We have carefully examined all of them, and each one contains some fault. In view of the great length of the requests just referred to we shall not set the mforth here; nor would it serve any useful purpose to do so. It must suffice to say that because of the inherent defects contained in each request the court was fully justified in refusing to give any of them.

NOTE.—*Res Ipsa Loquitur as Meaning the Mere Fact or With Attendant Circumstances.*—The instant case seems well ruled and the principle upon which it proceeds seems well illustrated in the case of Northern Pac. R. Co. v. Le Dean, 19 Idaho, 711, 115 Pac. 502, 34 L. R. A. (N. S.) 725, where there was a finding of nonliability.

That case concerned the rolling of a stone down a precipitous rocky mountain side and through the window of a passing train, striking and injuring plaintiff, a passenger.

The court said: "It is clear that the rock did not fall from the side of the cut. It was evidently not an overhanging or loose rock left on the face of the cut through which the track was laid. The respondent seems to think that the rock came from high up on the mountain side, and that theory is borne out by the testimony of the other witnesses, as well as by the surrounding circumstances, and the actual falling of the stone and its striking the car at the height and place where it did strike. . . . It is clear, therefore, that the accident did not occur by reason of anything the appellant or its agents did, nor did it occur through any defect in the appliances which appellant was using or the instrumentalities it was employing as a common carrier." The court then goes on to deny the claim that appellant was bound to clear the mountain side of loose and overhanging rock or to provide retaining walls to prevent it from

falling on trains. At the same time it was bound to protect passengers from obvious dangers. "But what might be termed an apparent and obvious danger along a railroad track in some sections of the United States, especially in less mountainous and rugged sections, would clearly not be considered an obvious danger along a line of road through the mountains, canyons and gorges of this country, and particularly of Northern Idaho." The theory of all this recognizes the laws of nature may impose in regard to an obvious danger to be protected against, but protection may be lessened in some circumstances and strictly required in others.

Even in a master and servant case where, strictly speaking, it is said *res ipsa loquitur* does not apply, it was held as to a butt-mold, which was left standing up instead of being laid down, that a servant could recover, because there was an obvious danger in the mold being placed in a position where a jar would start it rolling. Joliet Steel Co., 146 Ill. 603, 34 N. E. 1108.

Where sawdust on an overhead structure belonging to a street railway was blown into the eyes of a passenger, it was held this did not afford just ground for a reasonable inference that according to ordinary experience the accident would not have occurred except for want of due care." Wadsworth v. Boston Elevated Ry., 182 Mass. 572, 66 N. E. 421.

Britton v. St. Louis Transfer Co., 155 Ill. App. 317, applied the principle decided by the instant case to a person being injured by merchandise falling from a passing wagon of defendant, it being shown that the wagon was piled with loose furniture above the stakes.

A very interesting statement is made by Judge Nortoni of St. Louis Court of Appeals, recognizing, so to speak, an extension of the rule *res ipsa loquitur,* as follows: "There is, we understand, a marked distinction between the presumption afforded by the law in the doctrine *res ipsa loquitur* and a legitimate inference of negligence that may be gathered by the jury from the facts and circumstances in proof which surround and touch upon the alleged breach of duty. Where negligence thus appears as a reasonable inference from the facts and circumstances before the jury, it may be found therefrom to exist wholly aside from the presumption above mentioned. In such cases, the facts and circumstances affording reasonable inferences to the effect that defendants breached their duty are sufficient to cast the onus of exculpation from fault upon the adverse party and make a prima facie case." Copehart v. Musta, Mo. App. 145 S. W. 827.

This was said as to a hayfork falling upon plaintiff's husband, while unloading a load of hay. It was argued it fell from the trip rope giving way at a particular point.

We said above this was like an extension of the doctrine *res ipsa loquitur* as literally translated, while our view takes in the complete fact and the other but one phase of the circumstances. At all events both make a *prima facie* case, and there need be no difference whether we interpret the phrase literally or broadly. In some cases the former may do, but in master and servant cases generally the surrounding circumstances must be shown.

In Texas Pac. Ry. Co. v. Barrett, 166 U. S. 617, 41 L. ed. 1136, the rule as to master and servant cases of mere fact of injury not applying, but accompanying circumstances to show antecedent fault must be produced is recognized.

And in Byers v. Carnegie Steel Co., 159 Fed. 347, 86 C. C. A., 347, 16 L. R. A. (N. S.) 214, this rule is enforced by requirement of a showing of an accident and the circumstances under which it occurred.

Still more pointed, however, for our purpose here is the case of Westland v Gold Coin Mines Co., 101 Fed. 59, 41 C. C. A., 193, where Judge Thayer said: "The fact that the stoll fell demonstrates that it was insufficient to support the load with which it was burdened at the time it fell. The case in hand, then, is not that kind of which it may be said that the occurrence of the accident affords no evidence of negligence." The piling of the stone that rolled down the hill in the instant case was no otherwise an act of negligence than the insufficient supporting of the stoll, or *vice versa.*

In Hemphill v. Buck Creek Lumber Co., 141 N. C. 487, 54 S. E., the allowing rotten crossties to remain as the support of rails, joined to the fact of their spreading, made a *prima facie* case against the defendant.

And so in Sackewitz v. American Biscuit & Mfg. Co., 78 Mo. App. 144, a falling piece of timber, along with given circumstances made a *prima facie* case.

The rule as expressed by Judge Nortoni, *supra* is a little differed from, in definition, by New York Court of Appeals which says: "The phrase *res ipsa loquitur,* literally translated, means that the thing or affair speaks for itself. It is merely a short way of saying that the circumstances attendant upon an accident are themselves of such a character as to justify the conclusion that the accident was caused by negligence. The inference of negligence is deducible, not from the mere happening of the accident, but from the attendant circumstances." Marceau v. Ruthland R. R. Co., 211 N. Y. 203, 105 N. E. 206. In this case the court looked back of the immediate occurrence producing the injury to the probable cause of the trouble. As showing how aptly the case applies to the instant case we quote as follows: "There can be no doubt that the explosion by which the plaintiff was injured was due immediately to the displacement of the flue. It is a matter of common knowledge that steam, like electricity, is a capricious and fickle agency, which sometimes causes unexpected and unexplainable accidents."

C.

CORRESPONDENCE.

APPELLATE COURT ENTERING FINAL JUDGMENT.

Editor Central Law Journal:

In reading the most delightful article in your issue of November 6, 1914, by the Honorable George W. Alger, of New York, entitled,

"The Stopping Point in Litigation," I came across this statement, on page 338, in second column: "We are convinced that the jury trial system must require modification to continue in America. England has abolished, etc. * * * Having done so, she has then empowered her appellate courts to render final judgment on appeal, by correcting the errors of the courts below—a thing which is yet impossible in any American state in jury cases."

That the writer of the article is very much in error, I respectfully call his attention to the case of Maddux v. St. Louis Union Trust Co., decided at this (October, 1914) term of the St. Louis Court of Appeals—but as yet unreported—where a verdict of a jury in favor of defendant was by the Court of Appeals reversed and remanded, with directions to enter judgment for plaintiff; also to section 2083 of the Rev. Stats. of 1909, of the State of Missouri, and to the following cases: Joy v. Call, 124 Mo. App. 569; Betzfelder v. Waddle, 122 Mo. App. 462; In re Hutton's Estate, 92 Mo. App. 132; Patterson v. Patterson, 200 Mo. 335; Donnell v. Wright, 199 Mo. 304.

I find that the fault is not with the jury, but with the courts.

Respectfully yours,

HENRY B. DAVIS.

St. Louis, Mo.

NOTE.—Our correspondent in disputing the statement in the article referred to cites a number of cases which we have examined. Of those reported, one was a reversal and remand for new trial, one an affirmance on conflicting evidence, the third was like the first, the fourth was an equity case, which has always stood very differently from a law case—appellate courts making their own findings of fact, and the fifth was merely a construction of a statute, in which it was held that a reversal, on defendant's appeal, without more, amounted to a non-suit.

The Maddax case merely held that plaintiff's *prima facie* case was not disputed by any competent evidence to the contrary. None of these cases seems to us, therefore, in point.

The difficulty in American courts to which our contributor refers is in the constitutional right of trial by jury. An exception, however, is to be noted in Louisiana practice.

This question resembles greatly the partial new trial theory as to which this Journal has had considerable to say. We refer to an annotation by the present editor on this subject in 68 Cent. L. J. 161, where many authorities are cited and discussed, among others two Missouri cases. It is rare that this state has exercised the power as in those cases, but if it has it, we can conceive of no duty that would go further in support of the precept that justice delayed is justice denied.—EDITOR.

BOOK REVIEWS.

DIGEST OF WORKMEN'S COMPENSATION AND INSURANCE LAWS IN THE UNITED STATES,—REVISED TO DECEMBER, 1914.

To all who are interested in workmen's compensation and its progress throughout the United States, the Workmen's Compensation Publicity Bureau (F. Robertson Jones, secretary-treasurer, 80 Maiden Lane, New York City) has rendered a valuable service in compiling for ready reference and comparison an analysis of all the laws on this subject now in force within the United States. The Digest of Workmen's Compensation and Insurance Laws in the United States enters upon the second year of its publication revised to December, 1914, and now covers the laws of this character in 24 states including the Nebraska Act which was ratified by popular vote on November 3 last.

These various enactments, while differing widely in their administrative details and as to the amount and method of compensation provided, are all designed to meet the same end and therefore have many features in common. In this Digest the law of each state is analyzed under 35 headings which cover the essential features of the entire range of compensation laws in this country. The Digest is bound in convenient pocket form, and the arrangement is so devised as to present at once a comprehensive summary of the law in each state and a ready comparison of the provisions in the respective states as to any one or more particular items.

A new feature of the Digest which greatly enhances its value as a work of reference is a collection of cases cited at appropriate points throughout the Digest. The subject of compensation opens up a new and extensive field of adjudication in the United States, and the cases here assembled afford a judicial determination of many disputed points which have already arisen.

The Digest likewise gives the names, with postoffice addresses, of members of Workmen's Compensation Commissions, Industrial Accident Boards, or other officials having power to supervise or enforce the operation of the laws. It also contains a map showing graphically those states in which there are compensation laws, those states in which there are no laws, and those states in which there are no laws, but in which there are, nevertheless,

official commissions investigating the subject preparatory to introducing bills at the next sessions of their State Legislatures.

This Digest has come to be recognized as an authority on compensation laws, and already enjoys a wide circulation among industrial accident boards, workmen's compensation commissions, state labor bureaus, legislators, lawyers, jurists, publicists, social workers, employers, casualty insurance managers and liability insurance agents and brokers. The work is compiled and copyrighted by F. Robertson Jones and offered for sale by the Workmen's Compensation Publicity Bureau at $2.00 bound in paper, or $3.00 in flexible leatherette binding.

BOUVIER'S LAW DICTIONARY.

There comes to our desk the eighth edition, which constitutes the third revision, of possibly the best known book in the literature of American law. The first edition was in 1839 and in the course of more than fifty years seven editions, containing two revisions, came down to 1897. Now in 1914 the third revision occurs.

The editor of this revision is Mr. Francis Rowle, of Philadelphia, and it comes in three volumes, extension being made because of so much in new nomenclature occurring and annotation being greatly extended, and the series of reports now extant being added.

This third revision, however, pays no very great regard to titles of a statutory and changing nature, the work preserving its characteristic of permanence in the legal world.

An interesting example of the advance made by this edition of one of the elder books in the law meeting the new conditions is found in the definitions of the word "Alimony," and to what it applies. Treatment of this word takes up four pages, wherein is cited a great abundance of authority,—a veritable treatise on the subject.

This is but an example, and other titles are treated as exhaustively, making of the work not only a thesaurus of definition but, in effect, an authority for the practitioner in his search, for principles governing cases or questions.

These volumes are presented in the best style of the printer's art, both for readableness and endurance, in their binding of law buckram and issues from the houses of Vernon Law Book Company, Kansas City, Mo., and West Publishing Company, St. Paul, Minn., 1914.

HUMOR OF THE LAW.

"And are the divorce laws very liberal in your section?"

"Liberal? Say! They are so liberal that nobody ever heard of a woman crying at a wedding out there."—Detroit Journal.

Visitor—I've seen that man standing against that store for the past hour. Who is he—the constable?

Native—Naw; he be the banker, an' he's got a lien agin that property.—Michigan Gargoyle.

The judge decided that certain evidence was inadmissible.

Counsel took strong exception to the ruling, and insisted that it was admissible.

"I know, your honor," he said, warmly, "that it is proper evidence. Here I have been practicing at the bar for forty years, and now I want to know if I am supposed to be a fool?"

"That," quietly replied the judge, "is a question of fact, and not of law, so I won't pass any opinion upon it, but will let the jury decide."

In the British Parliament the question was once raised as to the need of having in the Wales county court judges who could speak the Welsh language.

The English members contended that there was not the slightest necessity for it; an English-speaking judge would, in every case, do exactly as well as a native. Then Mr. Mabon, a Welsh member, sprang to his feet.

"Very well," said he, "let us consider the matter. Here we are in the county court house at Ynysymaengwyn. I am the plaintiff. The attorney-general is the county court judge. He, in the course of the case asks me if I am prepared to swear that the boots delivered to the defendant, for the price of which I sue, were rights and lefts, or otherwise as the defendant alleges.

"That is a delicate question which I, with my partial knowledge of English, do not trust myself to answer, except in my native tongue. Therefore I say:

"'Cywmer daubwoch, ar gwastad clawdd lluest twich; pen-dre pistyll bwich dwy hafodtai lech wedd Yspytty?'

"Now," he thundered, while the House held its breath, and a cloud of embarrassment stole over the face of the attorney-general, "what does the honorable and learned gentleman say to that?"

The honorable and learned gentleman had no further objection to make.—Green Bag.

WEEKLY DIGEST.

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Account**—Equity.—Equity held to have jurisdiction of an accounting where the amount due could be ascertained only by investigating books and papers in defendant's possession, and the accounts which were so complicated that jurors could not satisfactorily determine the amount due.—Ely v. King-Richardson Co., Ill., 10 N. E. 619.

2. **Adverse Possession**—Presumption.—Where one enters by permission into possession of land, the presumption is that the subsequent possession and that of those claiming under him is in subordination to the paramount title; but such presumption may be overcome by evidence that it is adverse, of which fact the paramount possessor had actual notice or imputed knowledge.—Gee v. Hatley, Ark., 170 S. W. 72.

3. **Attorney and Client**—Deposit in Bank.—A bank which has credited a depositor's account with the amount of a check, drawn on another bank and deposited by him, before the check has been presented to the other bank for payment, is a general debtor to the depositor for that amount, and not a trustee to collect, where the bank becomes insolvent before the check is paid.—Gonyer v. Williams, Cal., 143 Pac. 736.

4.——Lien.—Counsel who, during the illness of the attorney of record, prepared the case for argument on appeal, though entitled to compensation therefor outside of his contract with the attorney of record, had no general lien, the right to which is limited to the attorney of record.—Goodwin Film & Camera Co. v. Eastman Kodak Co., U. S. D. C., 216 Fed. 831.

5.——Presumption.—That an attorney appears on behalf of a party raises a presumption of authority, but the presumption is disputable, and where it is fairly shown that no authority existed, the party can found no rights on the attorney's unauthorized act.—Title Ins. & Trust Co. v. California Development Co., Cal., 143 Pac. 723.

6. **Bail**—Refusal of—Where, on an application for bail, there is positive unimpeached evidence to sustain the conviction, and the entire evidence shows more than a mere probability of guilt of a capital offense, bail may be refused under Declaration of Rights, § 9, though the state's evidence be contradicted and conviction of a lesser crime would have been authorized.—Ex parte Tully, Fla., 66 So. 296.

7. **Bailment**—Defined.—A "bailment" is the holding of a chattel by one person under an obligation to return it to another after some special purpose is accomplished.—Gilson v. Pennsylvania R. Co., N. J., 92 Atl. 59.

8. **Carriers of Live Stock**—Contributory Negligence.—A provision in a contract for the carriage of a shipment of live stock that plaintiff would "be required" to ride in the caboose held not to make it negligence for him to ride in a car with the stock, with the knowledge of the trainmen and without objection from them.—Ralph v. Chicago & N. W. Ry. Co., U. S. C. C. A., 216 Fed. 744.

9.——Insurer.—A carrier, not being an insurer of a shipment of live stock against increased risks necessary to the transportation, is not liable for injuries, unless negligent.—Ft. Worth & D. C. Ry. Co. v. Berry, Tex., 170 S. W. 125.

10. **Carriers of Passengers**—Baggage.—Winter clothing which a passenger expected to use on the completion of his journey, winter being near, is baggage for the loss of which the carrier is liable.—San Antonio & A. P. Ry. Co. v. Green, Tex., 170 S. W. 110.

11——Loss of Ticket.—A sleeping car conductor is not required to accept the uncorroborated statement of a passenger that he had lost his ticket, and the company is not liable for the refusal of accommodations to the passenger, if such refusal was reasonable.—Armstrong v. Pullman Co., Miss., 66 So. 283.

12. **Chattel Mortgages**—Public Policy.—The lending of money upon chattel mortgages, and the carrying on of an habitual business on such security, is not contrary to public policy, and is not subject to regulation as in the case of pawnbrokers.—Wood v. Krepps, Cal., 143 Pac. 691.

13. **Commerce**—Foreign Corporation.—That a foreign corporation sends its agents into the state to solicit orders does not cause sales made by such corporation, where consummated outside of the state, to lose their standing as interestate commerce.—American Mfg. Co. v. Skidmore Drug & Furniture Co., Tex., 170 S. W. 128.

14.——Penalty.—The Interstate Commerce Commission under Interstate Commerce Act § 15, subd. 5, having ruled that a shipper may direct as to terminal routing and delivery, but having provided no penalty for a violation thereof no recovery can be had under the state law. Civ Code 1912, §§ 3194, 3195.—Mitchell v. Greenville, S. & A. Ry. Co., S. C., 83 S. E. 261.

15.——Sales by Solicitors.—Sales of goods by means of orders taken by solicitors, the goods remaining in all instances, the property of complainant, a New Jersey corporation, until they were delivered to the customer in Oregon, held interstate commerce, and hence neither complainant nor its solicitors were subject to the Oregon Peddlers Law.—Grand Union Tea Co. v. Evans, U. S. D. C., 216 Fed. 791.

16. **Common Carriers**—Warehouseman.—The common-law rule relieving a carrier, as such, from liability upon placing cars where they can be conveniently unloaded by the consignee merely changes its liability to that of a warehouseman.—Gary Bros. & Gaffke Co., v. Chicago, M. & P. S. Ry. Co., Mont., 143 Pac. 955.

17. **Constitutional Law**—Abutting Owners.—Laws 1895, c. 1006, providing that, where an official map is filed showing a discontinuance of certain streets, the rights of abutting owners to compensation for easements so appropriated shall be lost after six years, held unconstitutional, as depriving such owners of their property without due process of law.—In re Grand Boulevard and Concourse in City of New York, N. Y., 106 N. E. 631.

18.——Discrimination.—Acts 1913, c. 6422, relative to perfecting the right of investment companies to do business in the state, held not to arbitrarily discriminate against a local corporation so as to deny to it the equal protection of the law.—Ex parte Taylor, Fla., 66 So. 292.

19.——Imprisonment for Debt.—Acts 1913 (1st Ex. Sess.) c. 29, declaring it a misdemeanor if a corporation does not pay its employes at stated periods, indirectly authorizes imprisonment for debt, in violation of Const. 1870, art. 1, § 18.—State v. Prudential Coal Co., Tenn., 170 S. W. 56.

20. **Contracts**—Alterations. — Where the plans of an architect deviated so slightly from the law that an alteration could have been easily made, and the architect was given no opportunity to alter them, he is entitled to recov-

er for his services.—Klemm v. Hermann, N. J., 92 Atl. 51.

21. Corporations.—Corporation de Facto.—If some reqirement to a valid organization of a corporation is omitted, such as a failure to file its articles with the proper officer, and the other requirements are met, there will be a "corporation de facto."—Bank of Midland v. Harris, Ark., 170 S. W. 67.

22.——Employment Contracts.—Where the principal creditor of a corporation acquiesced in allowing a "general manager" to remain in charge until after sale on foreclosure of the creditor's mortgage, both the owner and the creditor were bound by employment contracts made by such manager, to the extent that the employes who acted in good faith were entitled to the privileges allowed by law for salaries and wages.—People's Bank & Trust Co. v. Fenwick Sanitarium, Ltd., La., 66 So. 307.

23.——Evidence.—In a suit for services, where plaintiff sought to recover on the theory that the contract made by the president alone was binding upon the corporation, he owning all the stock, evidence that the books of the corporation showed no authority of the president to enter into the contract is immaterial.—Edwards v. Plains Light & Water Co., Mont., 143 Pac. 962.

24.——Receivership.—Where the assets of a corporation have been sold in receivership proceedings, the right of a stockholder to hold the complainant, the receiver, and the other directors liable personally for losses incurred by such stockholder, by reason of such sale can be enforced by a separate bill, and not in the receivership proceedings. — Hutchinson v. Philadelphia & G. S. S. Co., U. S. D. C., 216 Fed. 795.

25. **Courts**—Rule of Property.—A former decision of the Supreme Court, which establishes a rule of property to which contracts can easily conform, will not be overruled, even if manifestly wrong, if it is not mischievous.—Forest Product & Mfg. Co. v. Buckley, Miss., 66 So. 279.

26. **Criminal Law**—Circumstantial Evidence.—Accused while under arrest having voluntarily placed one of his shoes in a track near the scene of the homicide, evidence as to the measurement of the shoes and tracks from a comparison made while accused was under arrest was not objectionable.—Underwood v. State, Miss., 66 So. 285.

27.——Directing Verdict.—Even where imprisonment is not a part of the punishment, the court may direct a verdict of guilty, where the evidence is consistent only with guilt, and the witnesses stand unimpeached either on account of bias or prejudice.—Paxton v. State, Ark., 170 S. W. 80.

28. **Customs and Usages**—Remittance by Bank.—Where a draft was remitted to a bank for collection, the contract for the collection and for the disposition of the proceeds thereof was one resting in general usage, and such usage was therefore admissible to explain the contract, under Code Civ. Proc. § 1870, subd. 12.—Gonyer v. Williams, Cal., 143 Pac. 736.

29. **Damages**—Wife's Earnings.—In a personal injury action by a married woman, where there was no showing as to her ability to earn money or her expectancy of life, it was improper to submit to the jury the item of damages for her loss of time.—City of Boulder v. Stewardson, Colo., 143 Pac. 820.

30. **Death**—Eyewitnesses.—In an action for the wrongful death of a miner, where there were no eyewitnesses, the presumption that he exercised due care in his own behalf, announced by Code Civ. Proc. § 1963, subd. 4, while rebuttable, is conclusive under section 1961 when not controverted.—Crabbe v. Mammoth Channel Gold Mining Co., Cal., 143 Pac. 714.

31. **Deeds**—Condition Subsequent.—Where a deed upon condition subsequent that the grantee build and operate a sawmill was duly recorded, and the condition broken before action was begun against the grantee, the grantor, on reentering, became the owner of machinery attached.—Bay City Land Co. v. Craig, Ore., 143 Pac. 911.

32.——Grantees.—Where a deed conveyed property to the grantors' daughter, "her children, the heirs of her body," the terms "her children" and "the heirs of her body" were used synonymously to mean "children" in a descriptive sense and hence the daughter took a life estate.—Duncan v. Medley, Ky., 170 S. W. 31.

33.——Joint Alienation.—The provision in a deed, that neither of the grantees shall sell his or her interest while the other is living, even if valid, does not prevent a joint alienation by them.—Holloway v. Green, N. C., 83 S. E. 243.

34.——Voluntary Deed.—No disaffirmance is necessary to set aside a voluntary deed, where the grantee himself took the hand of the grantor, while she was insensible, and himself made her mark on the paper.—Barkley v. Barkley, Ind., 106 N. E. 609.

35. **Divorce** — Instruction. — An instruction that if plaintiff sought a divorce because of the influence of her mother, instead of the wrongs of defendant, to find for defendant is erroneous as authorizing a verdict solely on the issue whether the mother induced the suit.—Powell v. Powell, Tex., 170 S. W. 111.

36.——Residence.—The word "residence," as used in P. S. 3071, requiring a year's residence as a condition to a suit for divorce, means legal domicile and where libelant's husband lived in Vermont and compelled her to go to another state, she was still a resident of Vermont, entitled to sue for divorce there, though she actually resided for a year before suit in such other state.—Miller v. Miller, Vt., 92 Atl. 9.

37. **Easements**—Lessee.—Where the lessee of a coal mine was granted a right of way to lay a water pipe line without the right of way being definitely described, and the way as located by him proved impracticable, because it was necessary to abandon the old operations and locate a new mine, he had a right to locate a new right of way for the pipe line.—Mary Helen Coal Co. v. Hatfield, W. Va., 83 S. E. 292.

38. **Electricity**—Fixtures.—An electric company upon changing the kind of current furnished its consumers, held not bound to alter fixtures so that they would be suitable for the new current.—Hunt v. Marianna Electric Co., Ark., 170 S. W. 96.

39. **Equity**—Discharge of Servant.—The maxim that he who comes into equity must do equity, held not to deprive sales managers, discharged for misconduct, of their right to an accounting not founded in any way on their wrongful conduct.—Ely v. King-Richardson Co., Ill., 106 N. E. 619.

40. **Estates**—Defined.—An "estate" in land is the right to the possession and enjoyment of it, while a "lien" on land is the right to have it sold or otherwise applied in satisfaction of a debt.—State Bank of Decatur v. Sanders, Ark., 170 S. W. 86.

41. **Estoppel**—Innocent Purchaser.—An innocent buyer of coal from an agent who represented that he was selling it on his own account cannot avoid liability to the true owner for the portion of the purchase price which he set off against a debt owed him by the agent before the sale, or for unpaid part of the purchase price.—Rocky Mountain Fuel Co. v. Geo. N. Sparling Coal Co., Colo., 143 Pac. 815.

42. **Evidence**—Admissions.—A mere offer to pay in compromise on a condition not accepted an item claimed to be owed is not an admission of such item being owed.—Tabet Bros. Co. v. Higginbotham, Tex., 170 S. W. 118.

43.——Foreign Marriage.—On an issue as to the performance of a marriage ceremony by a justice of the peace in a foreign state, the burden was on plaintiff to prove that the justice, under the laws of the state, was authorized to perform marriages.—Frederick v. Morse, Vt., 92 Atl. 16.

44. **Exchange of Property**—Rescission.—The promise of defendants to stand by plaintiff in the rooming house business transferred to her cannot be made the basis for rescission of an exchange.—Haney v. Parkison, Ore., 143 Pac. 926.

45. **Execution**—Vendible Property.—A vendor's lien, being a mere security for the payment of the debt due the vendor, was not vendible under an execution on a judgment against the vendor—State Bank of Decatur v. Sanders, Ark., 170 S. W. 86.

46. **Executors and Administrators**—Trustee.—Where an administrator c. t. a. obtains a fund

on the erroneous theory that he is also testamentary trustee, and afterwards defaults with reference thereto, a surety on his bond as administrator is not liable therefor.—In re Quimby's Estate, N. J., 92 Atl. 56.

47. **Fixtures**—Personal Property.—On breach of a condition subsequent, an engine and dynamo which had been used in a sawmill, on being borrowed and not returned, or returned and not used, became personal property subject to execution for the debts of the grantee.—Bay City Land Co. v. Craig, Ore., 143 Pac. 911.

48. **Fraud**—Executory Contract.—When a purchaser under an executory contract, who has paid only part of the purchase price, discovers that the land was misrepresented and elects to affirm the contract, in an action for damages the amount yet due under the contract should be deducted from the damages sustained.—Hines v. Brode, Cal., 143 Pac. 729.

49. **Frauds, Statute of**—Boundary Line.—The apparent transfer of lands, where a boundary line agreed upon by the parties varies from the true line, does not violate the statute of frauds, since it merely serves to establish the location upon the ground of the line described.—Grants Pass Land & Water Co. v. Brown, Cal., 143 Pac. 754.

50. **Garnishment**—Certified Check.—Where a garnishee bank accepted a certified check in payment of a note it held for collection, it was liable as garnishee for the amount of the collection, less the customer's debt to it.—Midway Five Oil Co. v. Citizens' Nat. Bank of Los Angeles, Cal., 143 Pac. 800.

51. **Gas**—Rates.—A city ordinance, fixing gas rates and prohibiting the collection, by rebate, drawback, or other device, of a greater or less or different sum than the rates fixed, prohibits a gas company from granting a discount to consumers paying their bills at its office on or before a designated day of the month next succeeding that during which the indebtedness was incurred.—Economic Gas Co. v. City of Los Angeles, Cal., 143 Pac. 717.

52. **Gifts**—Love Letters.—A love letter written by a man to a woman to whom he had proposed marriage, in which he stated that certain rugs were at her disposal, held not to constitute a valid gift to her, under Civ. Code, § 1147.—Humble v. Gay, Cal., 143 Pac. 778.

53. **Habeas Corpus**—Suspension of Writ.—The power to suspend the writ of habeas corpus is a legislative and not an executive function, and the Governor of the State, upon declaring military law in a section where insurrection exists, cannot suspend the writ.—Ex parte McDonald, Mont., 143 Pac. 947.

54. **Highways**—Pedestrians.—Pedestrians may use and traverse a highway at all its points, being chargeable only for the exercise of due care, measured by the use which they actually make of the highway, and this rule applies to city streets without reference to the amount of travel thereon.—Raymond v. Hill, Cal., 143 Pac. 743.

55. **Homicide**—Defense of Home.—Under Rev. Laws 1910, §§ 2334, 2342, a man may defend his domicile against every unlawful invasion, and may defend himself and those within it against violence, without the necessity of retreat, even to the taking of life, if apparently necessary to prevent a felony.—Armstrong v. State, Okla., 143 Pac. 870.

56.——Dying Declaration.—Where deceased was anesthetized shortly after the shooting, and was given opiates up to the time of his death, the burden is upon the one offering a dying declaration to show that deceased was rational when he made it.—Jolloy v. State, Tenn., 170 S. W. 58.

57. **Homestead**—Mortgage.—A mortgage of a homestead in which the wife did not join was void ab initio, though the husband and wife were living apart at the time it was executed.—Johnson v. Chandler, Vt., 92 Atl. 26.

58. **Husband and Wife**—Alienation of Affections.—In an action by a wife for alienation of affections, evidence of mental suffering was admissible to show damage, without a special allegation in the declaration.—Frederick v. Morse, Vt., 92 Atl. 16.

59.——Descent.—An undivided half interest in realty acquired by deceased during his first marriage passed to the minor children of such marriage on the death of his first wife.—Festivan v. Clement, La., 66 So. 304.

60.——Husband as Agent.—Married woman held liable on obligations incurred by her husband in the management of her farm which she turned over to him to manage, but not on his obligations incurred in buying and selling tobacco.—Corn v. Meredith, Ky., 170 S. W. 22.

61. **Insane Persons**—Deeds.—The rule that a deed, voidable because entered into by a person of unsound mind, carries title and must be disaffirmed by the grantor or his heirs, accompanied with an offer to restore the consideration, does not apply where the mental incompetency is known to the grantee.—Barkley v. Barkley, Ind., 106 N. E. 609.

62. **Injunction**—Jurisdiction.—Equity has jurisdiction to enjoin state officers from enforcing a state peddlers' law as against interstate commerce transactions, though the statute provides that its violation shall be punishable as a criminal offense.—Grand Union Tea Co. v. Evans, U. S. D. C., 216 Fed. 791.

63. **Innkeepers**—Loss by Customer.—Where a patron of a restaurant, having notices posted that it was "Not responsible for loss of coats," hung up his overcoat without calling the attention of defendants to it or asking that they take charge of it, held that defendant was not liable for its loss.—Gilson v. Pennsylvania R. Co., N. J., 92 Atl. 59.

64. **Insurance**—Void Insurance.—A policy written in Pennsylvania by an agency not authorized to do business in North Carolina on property located in that state is not void under Revisal 1905, § 4763; particularly where the company writing the policy and other agents of that company were authorized to do business in the state.—T. T. Hay & Bro. v. Union Fire Ins. Co., N. C., 83 S. E. 241.

65. **Intoxicating Liquors**—Personal Use.—Pub. Laws 1907, c. 1014, declaring it unlawful to sell or keep for sale intoxicating liquors in a certain city, prohibits importation for sale, merely, and not for personal use.—Southern Express Co. v. City of High Point, N. C., 83 S. E. 254.

66. **Judgment**—Constructive Trustee.—After verbal sale of land, followed by part payment, possession, and making of improvements, vendor held constructive trustee for purchaser, and judgment creditor of vendor acquired no lien on the land.—State Bank of Decatur v. Sanders, Ark., 170 S. W. 86.

67.——Forfeiture.—A judgment declaring a forfeiture of a street railway franchise as to the portion of the line not completed within the time fixed is not conclusive as to the validity of the franchise as to the remainder of the line, where no issue as to such validity was raised by the pleadings.—People v. Los Angeles Ry. Corporation, Cal., 143 Pac. 739.

68.——Receivership.—In an action on a Virginia judgment, it was no defense that it was uncertain in amount because of an equity in securities in the hands of the receiver in Virginia of an insolvent corporation, a party defendant in the bill on which the judgment was obtained; any remedy being against the receiver.—Swecker v. Reynolds, Pa., 92 Atl. 76.

69. **Judges**—Disqualification.—That the judge's law partner was the state's attorney for a judicial circuit held not to disqualify him from trying a criminal case in a court, where such state's attorney had nothing to do with the prosecutions before it.—Coleman v. Fisher, Fla., 66 So. 290.

70. **Landlord and Tenant**—Adverse Possession.—The possession of a tenant and of those succeeding to his possession is that of his landlord, and so long as the relation of landlord and tenant exists, the tenant cannot acquire an adverse title as against his landlord; but one who enters as tenant is not precluded from subsequently holding adversely to his landlord.—Gee v. Hatley, Ark., 170 S. W. 72.

71.——Damages.—She measure of damages for a lessor's breach of a farm lease was the value of the privileges granted by it subject to its conditions and all probable contingencies.—Cornelius v. Lytle, Pa., 92 Atl. 78.

72. **Larceny**—Pawnbroker.—In a prosecution of a pawnbroker for larceny after trust in the

conversion of a watch and ring, a pawn ticket similar to that given for the watch and ring held admissible on intent.—Wilensky v. State, Ga., 83 S. E. 276.

73. **Licenses**—Gross Earnings.—Const. art. 13, § 14, imposing a gross earnings tax on gas and electric light companies, and exempting them from all other taxes and licenses, held to exempt them from liability to pay license fees required by Motor Vehicle Act, §§ 4, 5, as a condition to the registration of motor vehicles used by such companies exclusively in their business.—Pacific Gas & Electric Co. v. Roberts, Cal., 143 Pac. 700.

74. **Limitation of Actions**—Accrual of Action. —Where services are rendered under an agreement that compensation is to be made at death, the amount does not become due until death, and limitations do not run until that time.—Helsabeck v. Doub, N. C., 83 S. E. 241.

75. **Logs and Logging**—Removal of Timber. —The owner of land, who conveys the timber with the right to remove it, without limiting the time for the removal, is not entitled to a cancellation of the conveyance because the purchaser failed to remove the timber within a reasonable time.—Forest Product & Mfg. Co. v. Buckley, Miss., 66 So. 279.

76. **Malicious Prosecution**—Probable Cause.—In an action for causing to be issued without probable cause a search warrant, the plaintiff shows a prima facie case when he proves that property was not found, and that for a long time plaintiff had shown a good reputation.—Smith v. McDuffee, Ore., 143 Pac. 929.

77. **Mandamus**—Defined.—A writ of mandate is for the purpose of compelling the performance of an act which the law especially enjoins as a duty resulting from an office, trust, or station.—Davies v. Board of Com'rs of Nez Perce County, Idaho, 143 Pac. 945.

78.——Remedy.—Where the board of an improvement district declined to allow a property owner to set off against his assessment on account of improvements already made by him, mandamus is not his proper remedy.—Casey v. Trout, Ark., 176 S. W. 75.

79. **Master and Servant**—Compensation.—That managers employed by a book company began the organization of a rival corporation in the same business, in consequence of which they were discharged, held not to deprive them of their right to compensation earned prior to their discharge.—Ely v. King-Richardson Co., Ill., 106 N. E. 619.

80.——De Facto Officer.—Where a city commissioner acted as such on the day on which his resignation became effective, his acts were not those of a de facto officer, since he was acting under no color of right to the office.—Loughran v. Jersey City, N. J., 92 Atl. 55.

81.——Employment.—Where defendant breached a contract of employment, plaintiff is entitled to recover in a single action, instituted before the time for performance had expired, all damages flowing from the breach.—Edwards v. Plains Light & Water Co., Mont., 143 Pac. 962.

82.——Proximate Cause.—Where plaintiff was injured by the breaking of a scaffold which he had himself constructed, the injury was the proximate result of plaintiff's own negligence, and not the master's failure to provide a safe place to work.—Yazoo & M. V. R. Co. v. Perkins, Miss., 66 So. 273.

83.——Safe Place to Work.—Helper in mine who, upon request, assisted in placing a prop to hold the roof held not engaged in making the mine safe, so as to relieve employer from liability for the helper's death from falling rock. —Borderland Coal Co. v. Small, Ky., 170 S. W. 8.

84. **Militia**—Insurrection.—Where the militia is called out by the Governor to put down an insurrection, the military forces operate as a sort of major police for the restoration of order, and may arrest rioters and hold them until the insurrection is put down before they are turned over to the civil authorities.—Ex parte McDonald, Mont., 143 Pac. 947.

85. **Mines and Minerals**—Stockholder.—A stockholder in a mining corporation has the right to examine the mining property of the company, including the right to be accompanied on such examination by an expert.—Hobbs v. Davis, Cal., 143 Pac. 733.

86.——Withdrawal from Entry.—Under Const. art. 4, § 3, and the statutes relating to the disposition of mineral and oil lands, the president had no constitutional authority to withdraw from entry over 3,000,000 acres of oil lands in California and Wyoming in aid of proposed legislation affecting the use and disposition of petroleum deposits.—United States v. Midway Northern Oil Co., U. S. D. C., 216 Fed. 802.

87. **Monopolies**—Labor Union.—The rule of a labor union forbidding the members of one local to work within the jurisdiction of another local without permission, when applied to a member who goes from one state to another to secure employment, does not violate the federal anti-trust act.—Monroe v. Colored Screwmen's Benev. Ass'n, No. 1, of Louisiana, La., 66 So. 260.

88.——Patterns.—Illegality, under the anti-trust laws, of contract to purchase patterns, which provided that buyer should only sell patterns of the seller, held not to defeat a recovery of the price for patterns received by the buyer. —McCall Co. v. Parsons-May-Oberschmidt Co., Miss., 66 So. 274.

89. **Mortgages**—Parties.—Where, in suit to foreclose mortgage by husband and wife on land of wife, plaintiff, without making heirs of wife parties, obtained a judgment for sale of land to satisfy secured note and unsecured individual note of the husband, providing for payment of surplus to husband, the judgment and sale were properly set aside over the objection of the husband.—Farmer v. Greene, Ky., 170 S. W. 17.

90.——Wills.—If an assignment of a mortgage by testatrix before she made her will was merely for collection, the avails would be hers, and pass under the residuary clause of her will.—Hopkins v. Sargent's Estate, Vt., 92 Atl. 14.

91. **Municipal Corporations**—Legislative Capacity.—A town in administering a water system, even within its own limits, does not act in a legislative capacity, but in a proprietary and only quasi public capacity.—Marin Water & Power Co. v. Town of Sausalito, Cal., 143 Pac. 767.

92.——Negligence.—Where the complaint alleged that defendant negligently ran his automobile, which was driven wantonly and maliciously at a speed in excess of 20 miles per hour, into plaintiff, the gravamen of plaintiff's case is negligent driving, and not wantonness and malice due to driving in excess of 20 miles per hour.—Townsend v. Butterfield, Cal., 143 Pac. 760.

93.——Police Power.—A city held not liable in damages to a railroad company because of the passage of an invalid ordinance in the good faith exercise of its police power by which the cost of the railroad company's operation was increased.—City of Chicago v. New York, C. & St. L. R. Co., U. S. C. C. A., 216 Fed. 735.

94.——Streets.—A city must keep its streets and sidewalks in a condition sufficiently safe to enable pedestrians to cross gutters and intersections without danger.—Smith v. City of New Orleans, La., 66 So. 319.

95.——Street Obstructions.—Where a railroad right of way became an established street, an ordinance prohibiting telegraph poles more than 24 inches from the curb intended to compel the removal of telegraph poles in the center of the street is not unreasonable.—Norfolk Southern Rwy. Co. v. Morehead City, N. C., 83 S. E. 259.

96. **Navigable Waters**—Riparian Owner.—A littoral or riparian owner of land on navigable tide waters has no right of access to the deep waters over intervening tide lands, and a state may, as against him, authorize as its agent a city to improve the tide lands in aid of navigation and commerce.—Henry Dalton & Sons Co. v. City of Oakland, Cal., 143 Pac. 721.

97. **Novation**—Contracts.—Party to contract of sale held not relieved of liability by agreement with other party's agent, substituting a third party as a party to the contract, where the agreement after submission to and approval by the principal was repudiated by the party seeking to be relieved from liability and the third party.—McCall Co. v. Parsons-May-Oberschmidt Co., Miss., 66 So. 274.

98. **Nuisance**—Abatement.—The nuisance not being the building in which dead animals were converted into fertilizer, but the business or the manner in which it was conducted, the matter of an abatement should not be intrusted to the sheriff by a mere order to abate, without instructions as to how it be done.—Wright v. State, Tenn., 170 S. W. 57.

99. **Obstructing Justice**—Fictitious Action.—Where a physician, conspiring with certain attorneys, induced a party to bring suit for injuries, when in fact he had not been injured, the physician was guilty of obstructing justice, a common-law misdemeanor, and was punishable therefor in the ordinary manner.—Melton v. Commonwealth, Ky., 170 S. W. 37.

100. **Partnership**—Association.—An association formed among the signers of notes given for the price of a horse to be owned by such signers does not, constitute a partnership within Rev. Codes, § 5466, unless the signers intend to carry on a business together and to share in the profits.—Croft v. Bain, Mont., 143 Pac. 960.

101. **Pawnbrokers**—Municipal Ordinances.—Under a municipal ordinance requiring pawnbrokers to secure a license, and persons lending money upon personal property to pay a license fee, the fact that a party carried on a pawnbroking business without a license will not invalidate chattel mortgages, taken as security for loans upon personal property; the two businesses being wholly distinct.—Wood v. Krepps, Cal., 143 Pac. 691.

102. **Payment**—Directions to Make.—Where a debtor directed the application of payments to a secured debt, his failure to object to the application of such payments to other accounts is not a ratification of such application.—P. Ballantine & Sons v. Fenn, Vt., 92 Atl. 3.

103.——Mistake of Fact.—Where hotel steward deposited the hotel money to his own account, and a check of the steward on that account, given to a creditor of the predecessor of the hotel owner, was paid out of such funds, the owner cannot recover the money paid as a payment made under mistake of fact.—Leavitt v. Leighton, Mass., 106 N. E. 634.

104. **Principal and Agent**—Instructions.—An instruction that a principal ratifies the acts of the agent when he approves them with full knowledge, and, if he approves that which is beneficial, he is bound by other provisions of the contract, is erroneous, because not extending the condition of knowledge to the whole charge.—L. C. Smith & Bros. Typewriter Co. v. McGeorge, Ore., 143 Pac. 905.

105.——Scope of Authority.—Under a contract for the sale of a traction engine, a local agent, on ascertaining that the engine did not comply with the warranty, had no authority to direct the buyer to take the engine home or try to at the seller's risk.—Nichols & Shepard Co. v. Stubbs Thresher Co., Ky., 170 S. W. 4.

106. **Receivers**—Mortgage Creditor.—Where a mortgage creditor of a corporation permits a receiver to sell the mortgaged property under order of court, the proceeds must bear their proportionate share of the fees of the receiver and his attorney.—In re Receivership of Farmers' Union Warehouse Co., La., 66 So. 315.

107.—**Removal of Causes**—Diversity of Citizenship.—In action against railroad company and its crossing flagman for death, failure of jury to return verdict against the flagman held not to show bad faith in joining him as a defendant or to entitle the railroad company to remove the cause on the ground of diverse citizenship.—Illinois Cent. R. Co. v. Outland's Adm'x, Ky., 170 S. W. 48.

108. **Sales**—Agent.—Where a contract by its terms constitutes one party a purchaser from the other, the use of the words "agents" and "sales agents," implying that such purchaser is an agent, does not change the relationship.—Commercial Credit Co. v. Girard Nat. Bank, Pa., 92 Atl. 44.

109.——Payment.—Where a contract of sale was silent as to the time of payment, and nothing to the contrary appeared, the seller was entitled to payment only on delivery.—Burlington Paper Stock Co. v. Diamond, Vt., 92 Atl. 19.

110.——Waiver.—Where a buyer of a traction engine, with knowledge that it did not work well and after notifying the seller of such fact, used it for ten months, and then attempted to surrender it at a place different from that of sale, the warranty was waived.—Nichols & Shepard Co. v. Stubbs Thresher Co., Ky., 170 S. W. 4.

111. **Searches and Seizures**—Waiver.—The consent of plaintiff's wife, on being shown a search warrant to a search of the premises, waived informalities in the complaint, writ, and appointment of the officer.—Smith v. McDuffee, Ore., 143 Pac. 929.

112. **Specific Performance**—Statute of Frauds.—A contract of sale of land will be specifically enforced, though the writing affords an insufficient description of the property, where the evidence establishes a state of facts taking the case out of the statute of frauds, and supplying the description.—Hirschman v. Forehand, Ark., 170 S. W. 98.

113. **Street Railroads**—Forfeiture.—An attempt by the predecessor in interest of the holder of a street railway franchise to construct a railroad along a portion of the route, forfeited for failure to complete in time, does not divest the title of the company to the completed portion.—People v. Los Angeles Ry. Corporation, Cal., 143 Pac. 739.

114. **Taxation**—Public Utility.—The operation of a municipal ice plant by a small city operating municipal waterworks and electric lighting systems held not "strictly" a public activity, and could not be maintained by the exercise of the taxing power under Const. art. 224.—Union Ice & Coal Co. v. Town of Ruston, La., 66 So. 262.

115. **Tenancy in Common**—Contribution.—When one tenant in common has paid a debt or obligation for the benefit of the joint property, or has discharged a lien or assessment imposed upon it as a common burden, he is entitled to contribution from its cotenant.—Willmon v. Koyer, Cal., 143 Pac. 694.

116. **Threats**—Threatening Letter.—Accused, who wrote trespasser that if he did not compensate accused for the damages he would prosecute him, is not guilty of sending a threatening letter, under Code 1906, § 1364.—State v. Ricks, Miss., 66 So. 281.

117. **Trial**—Evidence.—Where the case does not show that the testimony sought to be elicited by a question is material, and there is no offer, the exclusion of the testimony is not error.—Seeley v. Central Vermont Ry. Co., Vt., 92 Atl. 28.

118. **Trusts**—Care of Property.—Where trustees offered evidence that repairs to the trust property were necessary, that the work was done, and that the price was according to the regular course of trade, evidence of its reasonableness need not be produced.—In re Dreier's Estate, N. J., 92 Atl. 51.

119.—Estoppel.—Where trust deed by husband and wife was ineffective, acts of trustee after husband's death, with concurrence of wife, held to give the beneficiaries no right by way of estoppel.—Niccolls v. Niccolls, Cal., 143 Pac. 712.

120.——Failure of Purpose.—A trust, whether limited to a life or a term of years, will not be upheld, where its purpose fails before the expiration of the life or term.—In re Packer's Estate, Pa., 92 Atl. 65.

121.——Return of Money.—In a suit in equity to establish a trust in the proceeds of a resale of property, obtained from him by defendant for less than its true value, through fraud in which defendant participated, complainant is not required to return the money received by him for the property.—Conner v. Craig, U. S. C. C. A., 216 Fed. 729.

122. **Vendor and Purchaser**—Notice of Adverse Possession.—In an action to quiet title, where defendant, upon representations by plaintiff's predecessor in title as to agreed boundary lines, immediately took possession of the land up to such boundary, the plaintiff was put upon notice of the facts and charged with notice of the rights of the defendant.—Grants Pass Land & Water Co. v. Brown, Cal., 143 Pac. 754.

123.——Waiver.—Delay during the time parties to a contract are negotiating for a settlement is not a waiver of the right to rescind.—Brown v. Aitken Vt., 92 Atl. 22.